IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 271 of 2007

Valelcha Engineering Limited ..Petitioners

vs.

M/s S.Savla Constructions ..Respondents

Mr.K.M.Jawale for petitioners.
Mr.Navin Parekh i/b M/s Niranjan and Co. for respondents.

CORAM: S.C.DHARMADHIKARI J
22nd October,2007

P.C.

1. This arbitration petition is filed by the proposed claimants who are carrying on business as construction contractors and builders. The respondents are in identical business.

2. The parties had entered into an agreement, details of which are more particularly described in the arbitration petition. The respondents were to pay to the petitioners a total sum of Rs.7/- crores as set out in clause 3 of the agreement, copy of which is annexed as Exh.C. There are certain payments made but the grievance is that defaults have been committed and now the negative covenent appearing therein must operate.

3. The respondents have filed the affidavit in reply to the Arbitration Petition dealing with all the averments therein. It is urged that the negative covenent which restrains the respondents from handing over or transferring so also alienating or encumbering in any manner the area of 13,000 sq.ft. built up in the building under construction would not operate for the reasons that are more particularly elaborated in the affidavit of Mr.Shailesh Savala. The respondents have contended before me that a sum of Rs.1,50,00,000/- was required to be paid to the Municipal Corporation which has been done by the respondents on behalf of the petitioners. There are further sums paid including a sum of Rs.20,00,000/- for obtaining the deed of conveyance. The grievance also made is that the petitioners' acts of ommission and commission have resulted in loss to the petitioners. In such circumstances and when nothing is due and payable, the negative covenent should not be made operative is the submission of Mr.Parekh appearing for the respondents.

4. After the matter was argued by Mr.Jawale and Mr.Parekh at some length, finally, without prejudice to the rights and contentions on merits of the matter, it is agreed that the portion as

envisaged by the agreement and negative covenant would be carved out and the same would not be dealt with in any manner pending the arbitral reference. Thus, it is agreed that all the flats on the second floor in the proposed building so also flat nos.1,2 and 3 on the third floor of the proposed building/construction would not be alienated, encumbered, transferred or sold in any manner by the respondents till disposal of the proceedings before the Arbitrator.

5. Accordingly it is directed that till the arbitration proceedings are disposed of the respondents shall not sell or transfer the portion as designated and earmarked on the annexed plan in any manner whatsoever. However, this order does not prevent the respondents from completing the construction at site so also from applying for approvals and certificates to enable the parties to occupy the said building. It also does not prevent the respondents from dealing with other portions of the building in accordance with the terms and conditions except the flats on the second floor and flat nos.1, 2 and 3 on the third floor. Both sides agree that this portion is delineated and identified on the floor plan, copy of which is placed on record. The said copy has been duly

authenticated by the respective Advocates. The floor plan is taken on record and marked "X" for identification.

6. Needless to clarify that this consent order shall not preclude both sides from raising appropriate pleas on merits of the controversy and the Arbitral Tribunal shall deal with them uninfluenced by any observations in this order or the workable without prejudice to arrangement arrived at by the parties. The arrangement is temporary and tentative so as to enable the arbitral reference to be adjudicated properly. The arbitration petition is disposed of with no order as to costs.

(S.C.DHARMADHIKARI J.)